



**STATE OF TENNESSEE  
DEPARTMENT OF CHILDREN'S SERVICES**

**COMPETITIVE NEGOTIATION**

**FOR**

**DAVIDSON & MID-CUMBERLAND  
RESIDENTIAL LEVEL III SPECIAL NEEDS  
ENHANCED A&D REHABILITATION PROGRAM  
RFS #359.30-614**

CONTENTS	
Section 1	Introduction
Section 2	Competitive Negotiation Schedule
Section 3	Communication Requirements and Other Information
Section 4	Proposal Information
Section 5	Proposal Format & Content
Section 6	Minimum Requirements
Section 7	Proposal Requirements
Section 8	Pro Forma Contract

## **1. INTRODUCTION**

### **Statement of Purpose**

The purpose of this **FUNDING OPPORTUNITY** is to define the State's minimum requirements, solicit proposals, and gain adequate information by which the State may evaluate the services offered by Proposers.

The State of Tennessee, Department of Children's Services (DCS), hereinafter referred to as the State, intends to secure a contract for Residential Level III Special Needs Enhanced A&D Rehabilitation Program .

The scope of services for Level III Special Needs Enhanced A&D Rehabilitation Program is detailed in the Department of Children's Services Provider Policy Manual that may be found at <http://www.state.tn.us/youth/providers/index.htm>.

### **Service Details**

**Region:** Davidson & Mid-Cumberland

**Level of Service:** Level III Special Needs Enhanced A&D  
Rehabilitation Program

**Requested Slots:** 3,872

**Contract Term.** This Contract shall be effective for the period commencing on November 1, 2008 and ending on June 30, 2009, The State shall have no obligation for services rendered by the Contractor, which are not performed within the specified period.

**Population to be served:** Male & Females

**Special Requirements:** This contract will serve Davidson and Mid-Cumberland. Needs to be a secure facility.

## **2. COMPETITIVE NEGOTIATION SCHEDULE**

The following Schedule of Events represents the State's best estimate of the schedule that shall be followed. Unless otherwise specified, the time of day for the following events shall be between 8:00 a.m. and 4:30 p.m., Central Time.

The State reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. Notification of any adjustment to the Schedule of Events shall be provided to all vendors.

	<b>EVENT</b>	<b>DATE</b>	<b>TIME</b>
1	State Issues Competitive Negotiation	September 18, 2008	
2	Deadline for Submitting a Proposal <u>and</u> State Opens Proposals	October 8, 2008	10:00 a.m. CT
3	State Sends a written Notice to Proposers <u>and</u> State Opens Files for Public Inspection	October 17, 2008	
4	Anticipated Contract Start Date	November 1, 2008	

### **3. COMMUNICATION REQUIREMENTS AND OTHER INFORMATION**

#### **COORDINATOR:**

The following Coordinator shall be the main point of contact for this Competitive Negotiation:

David Arrington  
Department of Children's Services  
436 6<sup>th</sup> Avenue North  
7<sup>th</sup> Floor, Cordell Hull Building  
Nashville, TN 37243  
Telephone Number: (615) 532-7849  
Fax Number: (615) 244-8969  
Email Address [david.arrington@state.tn.us](mailto:david.arrington@state.tn.us)

#### **Communications Regarding the Competitive Negotiation**

- All vendor communications concerning this procurement must be directed to the Coordinator. Unauthorized contact regarding this procurement with other State employees of the procuring state agency may result in disqualification.
- All communications should be in writing to the Coordinator. Any oral communications shall be considered unofficial and nonbinding on the State
- E-mail communications are acceptable.
- The State shall respond in writing to written communications. The State reserves the right, at its sole discretion, to determine appropriate and adequate responses to written comments, questions, and requests for clarification.

#### **Right of Rejection**

- The State reserves the right, at its sole discretion, to reject any and all proposals or to cancel the Competitive Negotiation in its entirety.
- Any proposal received, which does not meet the requirements of this Competitive Negotiation, may be considered to be nonresponsive, and the proposal may be rejected.

#### **Selection Criterion**

All proposals are reviewed by a group of state employees selected by the Department of Children's Services. The minimum number of state employees on a review team will be three (3). Based on the evaluations of the panel selections will be made and submitted for final approval to the Commissioner of the Department of Children's services or his/her designee.

The Department of Children's Services reserves the right to further negotiate proposals submitted for consideration.

#### **4. PROPOSAL INFORMATION**

##### **SUBMITTING THE PROPOSAL:**

- All proposals **MUST** be submitted to the Department of Children's Services at the following address:

David Arrington  
Department of Children's Services  
436 6<sup>th</sup> Avenue North  
7<sup>th</sup> Floor, Cordell Hull Building  
Nashville, TN 37243

##### **Proposal Deadline**

Proposals shall be submitted no later than the Proposal Deadline time and date detailed in the Section 2, Schedule of Events. A Proposer's failure to submit a proposal as required before the deadline shall cause the proposal to be disqualified.

Proposers assume the risk of the method of dispatch chosen. The State assumes no responsibility for delays caused by any delivery service. Postmarking by the due date shall not substitute for actual proposal receipt by the State. Late proposals shall not be accepted nor shall additional time be granted to any potential Proposer.

Proposals may not be delivered orally, by facsimile transmission, or by other telecommunication or electronic means.

## **5. MINIMUM REQUIREMENTS :**

Documentation of the following ***must*** be met for responses to be eligible for review:

1. Agency must be accredited, or have applied for accreditation with a nationally recognized accreditation body at the time proposals are submitted;
2. Agency must have all required licenses and educational requirements;
3. Agency must maintain and have access to operating capital of ninety (90) days. Please note for agencies submitting a proposal as a partnership, joint venture, collaborative or consortium, the proposal must clearly define each agency's financial commitments and obligations; and,
4. Agency must agree to accept the Tennessee Child & Adolescent Needs and Strengths (CANS) as well as the Youth Level of Service (YLS) assessment tools the Department utilizes for making Level of Care recommendations.
5. Licenses : Appropriate licenses

## **6. PROPOSAL FORMAT AND CONTENT**

**Any proposal received which does not meet the requirements of this Competitive Negotiation, may be considered to be nonresponsive, and the proposal may be rejected.**

- Proposals should be prepared simply and economically and provide a straightforward, concise description of the Proposer's capabilities to satisfy the requirements of the Competitive Negotiation. Emphasis should be on completeness and clarity of content.
- Proposers must follow all formats and address all portions of the Competitive Negotiation set forth herein providing all information requested. Any proposal received, which does not meet the requirements of this Competitive Negotiation, may be considered to be nonresponsive, and the proposal may be rejected.
- Proposers must respond to every section identified. Proposers must label each response with the section numbers associated with the subject requirement.
- Proposal materials must be submitted in the order indicated on the checklist, Section 7. Proposal Requirements.

Failure to follow the specified format, to label the responses correctly, or to address all of the sections may, at the State's sole discretion, result in the rejection of the Proposal.

- Proposals shall be type written, double spaced on standard 8 1/2" x 11" white paper, Font size of 10 with 1" margins.
- All proposal pages must be numbered and stapled or otherwise secured.
- The proposal must include a table of contents
- The number of copies for each item must be submitted as indicated.

## **7. PROPOSAL REQUIREMENTS**

### **FAILURE TO PROVIDE ANY OF THE INFORMATION INDICATED BELOW AND IN THE SPECIFIED FORMAT MAY BE CONSIDERED NONRESPONSIVE AND RESULT IN THE REJECTION OF THE PROPOSAL.**

Each PROPOSAL **must** include the items listed below:

1. Cover page:
  - Competitive Negotiation # 359.30-614
  - Federal Employee Identification Number (FEIN);
  - Residential Level III Special Needs Enhanced A&D Rehabilitation Program
  - Include the names, addresses, contact names, phone number and email address for contact person for the agency.
  - State of Incorporation
  - Profit or Non-Profit
2. Agency's legal name, executive officer, contact name, phone and fax number, address and any other identifying information;
3. Brief 1-2 paragraph statement as to the background and history of the agency;
4. Statement of agency readiness and experience to provide the full array of services for Level III Special Needs Enhanced A&D Rehabilitation Program services within the Davidson Mid Cumberland regions.
5. *Include a prospective date that services will be available to DCS.*
6. Identify agency capacity for Level III Special Needs Enhanced A&D Rehabilitation Program services as follows:
  - a. Type of License:
  - b. Licensing bed capacity:
  - c. Number of bed capacity available to DCS:
  - d. Number of residential bed capacity:
  - e. Population served (Male and/or female):
7. Documentation of agency's clinical experience including statistical data supporting the agency's overall success rates; and,
8. All appropriate licenses, accreditations, application for accreditation and proof of agency's compliance with educational requirements per level of care. If an agency engages sub-contracted services, the primary contracting agency will be responsible for submitting all verification of the sub-contractor's applicable licenses, accreditations, application for accreditation and educational requirements;
9. Liability Insurance;
10. Documentation from a financial institution attesting to the responding agency's financial health and a copy of the responding agency's most recent independent audit;



11. Documentation of access to operating capital for a period of ninety (90) days;
12. Include **Five (5) Copies** of your proposal.

## **SCOPE OF SERVICES: LEVEL III SPECIAL POPULATION**

### **ENHANCED A&D RESIDENTIAL REHABILITATION PROGRAM**

#### **Agency/Program Description:**

The agency must have accreditation by a national entity such as the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), Council on the Accreditation of Rehabilitative Facilities (CARF) or the Council on Accreditation (COA). The agency should have licensed addictions clinicians and use evidenced-based practices in the treatment program.

A literature review on community studies of adolescent substance use, abuse, or dependence (SU/A/D) and psychiatric co-morbidity yielded 22 articles from 15 studies with information on rates, specificity, timing and differential patterns of co-morbidity by gender, race/ethnicity and other factors. Results revealed that 60% of youth with SU/A/D had a co-morbid diagnosis. Conduct disorder (CD) and oppositional defiant disorder (not to include Attention-Deficit/Hyperactivity Disorder) were most commonly associated with SU/A/D, followed by depression. Child psychopathology (particularly CD) was associated with early onset of substance use and abuse in later adolescence. *Journal of Consulting and Clinical Psychology, 70(6), 1224–1239.*

This program addresses the treatment needs of adolescents, ages 13 to 18, exhibiting behaviors relating to the abuse and misuse of alcohol and/or other drugs. Evidence must indicate a severe and significant impairment in familial, social, educational or occupational functioning. The program is designed for adolescents who need continued structure beyond a typical family setting to provide protection from negative peer influences while promoting a sustained focus on their recovery and rehabilitation. There is a need for 24-hour supervision by staff which will prepare the adolescent for the independence necessary to be successful in settings away from his or her home. The residential program uses a structured 7-day-a-week/24-hour therapeutic environment to achieve rehabilitation.

#### **Expected Goals/Outcomes:**

- Discontinuation of Drug Use;
- Reduction of Delinquent Behavior (i.e., no new arrests);
- Improvement in School;
- Better Family Relations/Functioning;
- Reduction of High-Risk Behavior; and
- Treatment for Co-occurring Illness (mental & physical)

#### **Admission Criteria (accepted referrals must meet all of the following):**

1. The adolescent has a substance-related disorder as a primary DSM-IV diagnosis. Children eligible for enhanced Alcohol and Drug treatment services may exhibit co-morbid substance-related and mental disorders such as, but not limited to, depression, oppositional, conduct, personality and mood disorders.

2. The adolescent is ineligible if the adolescent indicates a need for medical detoxification, is actively suicidal or homicidal, or has psychosis that is not controlled by medication. Furthermore, any present psychosis described as “substance-induced” or resultant from “substance-intoxication” or “substance-withdrawal” does not render the adolescent ineligible. Adolescents with a diagnosis of Mental Retardation are evaluated on a case-by-case basis. Adolescents with an I.Q. lower than 55, or who have adaptive functioning indicating moderate to severe Mental Retardation are not appropriate, unless the agency is licensed for this service type.
3. The adolescent displays a pattern of severe substance abuse/dependency as demonstrated by significant social and functional impairment with family, school, peers, and/or community.
4. In spite of recent efforts (i.e., within the past 4 months) in less intensive community-based treatment, the adolescent has been unable to successfully maintain abstinence and recovery.
5. There is documented evidence of, or a realistic indication of, serious, impending risk of physical harm to self or others directly associated to the continued abuse of substances. This documented evidence rules out treatment in a community-based setting.
6. For those adolescents with a previous history of treatment and/or repeated relapses involving multiple treatment attempts, there must be some indication supporting a readiness for change.
7. There is a commitment on the part of the family or primary support to actively participate in the adolescent’s treatment.

**Assessment and Case Planning:**

1. A screening must be conducted with the adolescent prior to making a referral for residential rehabilitation services. The screening must be completed by a person with the appropriate training and/or expertise in the addictions field to determine the need and level of intensity of services required.
2. Upon admission to the program, administration of a nationally recognized A&D evaluation instrument must be administered by designated addictions treatment personnel or addictions-credentialed clinician.
3. A Face-to-Face Clinical Interview should gather information on the following:
  - History of Drug and Alcohol Use;
  - Medical Health History;
  - Psycho-Social Developmental Issues;
  - Mental Health History;
  - Psychotropic Medication History;
  - Strengths or Resiliency factors;
  - Family History;

- School History;
  - Vocational History;
  - Sexual History;
  - Peer Relationships;
  - Social Service Agency Program Involvement;
  - Juvenile Justice Involvement & Delinquency;
  - Home Environment;
  - Leisure Activities;
  - Ethnic/Cultural Factors; and,
  - Motivation and/or Readiness for Change
4. The comprehensive assessment and clinical interview should be completed within three (3) days of program admission.
  5. There must be a pre & post test measure employed to indicate progress in meeting treatment goals (i.e., the CANS).
  6. The program will have adequate medical and nursing services available in addition to accessibility to psychiatric consultation.
  7. The initial treatment plan is completed within the first 24 hours of admission. Initial treatment goals and objectives will be directed by the results of this comprehensive assessment.
  8. Follow-up on progress toward goals and objectives contained in the initial plan will be monitored and reviewed after the first 30 days of treatment have been completed.
  9. An individualized treatment plan is developed using behavioral health interventions and residential support to the adolescent for assistance in:
    - a. Identifying and decreasing problem behavior;
    - b. Identifying, increasing and supporting pro-social and positive behaviors;
    - c. Acquiring and consistently displaying skills necessary to live as independently as possible; and
    - d. Identifying, implementing and consistently displaying the skills necessary to minimize his/her relapse in the family or community setting.

The plan requires the involvement of family and/or supportive person.
  10. The treatment plan will be reviewed and revised as determined by the adolescent's progress on the presenting or newly defined problem(s) each week.

11. The adolescent's progress on the treatment plan will be regularly documented in the treatment record by the provider.
12. The provider will have primary responsibility for case management/coordination activities while adolescents are in treatment. Routine reports are to be submitted to the DCS family service worker on or before the fifth day of each month.
13. Discharge/Aftercare Planning - upon admission to the program, the initial discharge planning should be linked to the behaviors and/or symptoms that have led to admission. Identifying when the adolescent can appropriately transition to community-based treatment is also a critical feature in determining aftercare needs.

**Program Features:**

1. Rehabilitative residential treatment offering a supervised 7-day-a-week/24 hours-a-day therapeutic setting. The residential services include but are not limited to: assessment, individual therapy, group therapy, family therapy or any combination of counseling services.
2. The program must have the capacity to address the multiple needs of the adolescent while coordinating with the family, juvenile courts and schools.
3. The residential rehabilitative program is **not to exceed more than 60 days** at this level of care. The expectation is for this level of treatment intensity to be shorter in duration. Continued stay beyond the maximum time period will require clinical evidence submitted for utilization review to justify the ongoing severity of need requiring this intensity of service.
4. Therapy includes a minimum of seven (7) counseling contacts per week of at least 60 minutes to 90 minutes duration per session, in addition to a minimum of five (5) lecture/seminars per week.
5. There will be three (3) group sessions a week for each youth.
6. Group size should have a minimum of four (4) and no more than twelve (12) participants for a valid group session. Groups over six (6) must be facilitated by at least two staff. The facilitator shall have the appropriate credentials and must have training in group facilitation.
7. There will be at least two (2) individual therapy sessions per week.
8. Adolescents will be served in the program by employing treatment techniques and utilizing manualized evidence-based practices which have been found effective. Program will develop and maintain a manual that details the agency's plan for staff training in the model, maintaining model fidelity and will define how staff will adhere to the components of the manual.
9. Certified in-house school with accessibility to Special Education. The provider's in-house school will coordinate and consult with the adolescent's home school to maintain continuity in the educational program.

10. Additional Services such as, but not limited to:

- Wellness Activities (i.e., Adventure based counseling, Recreation, Physical Education)
- Psycho-Educational Groups Focused on Skill Building
- Prevention Education
- 12 step or self-help programs such as AA/NA
- Therapeutic Outings/Field Trips
- Life Skills Development
- Financial Skills Training
- Independent Living Skills Training
- Education and Relapse Prevention education
- Evidence-Based Curriculum
- Pre and post testing in psychosocial and educational functioning
- On-Site Education
- Parent Education
- Medication Management

11. Treatment manuals may be utilized as a component of the intervention, but may not be considered as the full treatment program. Maintaining a therapeutic milieu in alcohol and drug treatment requires that staff work with the children through brief group meetings where the children set goals for the day in the morning and evaluate their progress toward those goals at intervals during the day. Staff activities throughout the day shall support progress to these goals.

**Family Involvement:**

Family active involvement in the treatment process is an essential factor in producing positive outcomes for the adolescent. Providers will make a concentrated effort to engage the families in the treatment process through a variety of means such as:

- Family therapy at least once a week. This includes face to face family therapy with DCS family service workers assisting with access transportation to family therapy. Clear documentation as to why this did not occur will be kept in the child's treatment record. Alternative forms of contact such as phone conferences and/or parent education/support groups are also appropriate means to engage families in the treatment;
- Parent Education;
- Participation in the adolescent's treatment planning and CFTM which might take place in the resident's home;

- Agency will also communicate with the family through phone calls, letters, email, program newsletters, to keep the family updated on their progress in treatment; and,
- The provider agency will assist the family in getting referrals to a variety of community services to improve their general functioning.

**Staff Requirements:**

1. A clinical program director that is trained and knowledgeable of current approaches in the field of addiction regarding the treatment of adolescents.
2. Treatment should be provided by credentialed addictions counselors.
3. There should be at least one credentialed addiction counselor or addictions clinician to complete the assessments.
4. Program should ensure continuing education for clinical treatment staff in the evaluation and treatment of adolescents with substance-related disorders.
5. To better implement an enhanced program, non-clinical support staff who also have contact with or supervise children also need initial and ongoing training in the core functions of alcohol and drug counseling and support, such as assessment, normal and drug affected adolescent development, family dynamics, and continuing care planning (often referred to as "consultation" and "referral" in the alcohol and drug field).

**Goal:**

The goal of this service delivery is to attain permanency through reunification if at all possible, upon completion of the 60 day program or soon thereafter.

The program shall assist the child and family in identifying and accessing community services.

**DCS Provider Policy Manual:**

The DCS Provider Policy Manual is incorporated herein by reference.

## **7. PRO FORMA CONTRACT**

### **CONTRACT BETWEEN THE STATE OF TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES AND [PRIVATE PROVIDER NAME]**

This Contract, issued under Special Delegated Authority (DA NUMBER), by and between the State of Tennessee, Department of Children's Services (DCS), hereinafter referred to as the "State" and [PRIVATE PROVIDER LEGAL ENTITY NAME], hereinafter referred to as the "Private Provider," is for the provision of [SHORT DESCRIPTION OF THE SERVICE], as further defined in the "SCOPE OF SERVICES" contained in the DCS Provider Policy Manual herein attached by reference.

The Private Provider is [AN INDIVIDUAL / A FOR-PROFIT CORPORATION / A NONPROFIT CORPORATION / A SPECIAL PURPOSE CORPORATION OR ASSOCIATION / A FRATERNAL OR PATRIOTIC ORGANIZATION / A PARTNERSHIP / A JOINT VENTURE / A LIMITED LIABILITY COMPANY].

Private Provider Vendor Identification Number: FEDERAL EMPLOYER ID # OR SOCIAL SECURITY #  
Private Provider Place of Incorporation or Organization: LOCATION

#### **A. SCOPE OF SERVICES:**

- A.1. The Private Provider shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Private Provider shall provide up to but not exceeding (NUMBER) client days of (TYPE OF SERVICE) services. This service is more fully described in the DCS Provider Policy Manual.
- A.3. The Private Provider must maintain appropriate licensure required to provide the services covered by this contract. The Private Provider must notify the DCS Contracts and Grants Management Division immediately, in writing, of any change in licensure status.
- A.4. The DCS shall evaluate each contract annually to ensure accountability, cost-effectiveness of service provision, and achievement of positive outcomes for children and families as evidenced by both qualitative as well as quantitative performance measurement as defined by DCS
- A.5. DCS shall evaluate the Private Provider in the following areas as detailed in the DCS Provider Policy Manual including any changes or additions that may subsequently be made:
  - 1. Child Safety
  - 2. Movement
  - 3. Permanency/Successful Program Completion
  - 4. Family Involvement:
  - 5. Reporting and Compliance:
- A.6. The Private Provider will work in compliance with the system DCS is developing for continuous quality improvement, which includes, but is not limited to, the Quality Service Review, the DCS Balanced Scorecard, and the ongoing monitoring and evaluation of performance.
- A.7. The Private Provider must request a Child & Family Team Meeting (CFTM) from the DCS Home County Family Service Worker (FSW) prior to the move of a child. Notification of Emergency moves must be in accordance with the DCS Private Provider Policy Manual and reported the next business day with an immediate request for a CFTM.



A move is any change in placement (internal and external to the agency) location except for temporary breaks in service as further defined in the DCS Private Provider Policy Manual and incorporated herein by reference.

- A.8. The Private Provider **MUST** report all movement of children (internal and external to the agency) through the Financials Movement Notification Web Application and in accordance with the Private Provider Policy Manual. No other method of reporting movement is acceptable unless the agency can demonstrate a problem with the application.
- A.9. If resource home services are provided as a part of this contract, the Private Provider will place children only in resource homes that are in full compliance with DCS Administrative Policy 16.4 "Foster Home Study, Evaluation and Training Process" and the DCS Private Provider Manual on the date of placement.
- A.10. The Private Provider will incorporate and accept the Child & Adolescent Needs and Strengths (CANS) assessment analysis for establishing a level of care recommendation upon implementation by DCS.
- A.11. The Private Provider will participate in the development and the use of any State Automated Child Welfare System (SACWIS) developed and implemented by DCS.
- A.12. The Private Provider shall report all face-to-face (F2F) contact information on every child currently placed with the Private Provider into the face-to-face web application as outlined in the DCS Private Provider Policy Manual. The F2F contact information must be submitted to DCS through the F2F web application and must include child specific identifying information related to the following:
  - a. The number of face-to-face contact between custodial child and siblings;
  - b. The number of face-to-face contacts with parent(s) or adults identified as potential permanency placement on permanency plan;
  - c. The number of children and families involved in service planning;
  - d. The number of face-to faces contacts between custodial child and Private Provider Case Manager; and
  - e. The number of face-to face contacts between custodial child on a trial home visit and Private Provider Case Manager.

**B. CONTRACT TERM:**

Contract Term. This Contract shall be effective for the period commencing on September 01, 2008 and ending on June 30, 2009. The State shall have no obligation for services rendered by the Private Provider which are not performed within the specified period.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed [WRITTEN DOLLAR AMOUNT], (\$[NUMBER AMOUNT]). The payment rates in Section C.3 shall constitute the entire compensation due the Private Provider for the Service and all of the Private Provider's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, profit, and all other direct and indirect costs incurred or to be incurred by the Private Provider.

The Private Provider is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Private Provider and does not guarantee payment of any such funds to the Private Provider under this Contract unless the State requests work and the Private Provider performs said work. In which case, the Private Provider shall be paid in accordance with payment rates detailed in Section C.3. The State is under no obligation to request work from the Private Provider in

any specific dollar amounts or to request any work at all from the Private Provider during any period of this Contract.

- C.2. **Compensation Firm.** The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to increase for any reason unless amended.
- C.3. **Payment Methodology.** The Private Provider shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Private Provider's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Private Provider shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)*
Service Description	\$ NUMBER per client per day

\* The amount(s) per compensable increment detailed above shall be contingent upon the State's receipt of an invoice (as required in section C.5. below) for said service(s) within thirty (30) days after the end of the calendar month in which service(s) were rendered. At the sole discretion of the State, the amount per compensable increment of any service for which the State receives an invoice later than prescribed herein shall be subject to a reduction in amount of up to 100%. In the case of an untimely invoice, before any payment will be considered by the State, the Private Provider must submit a written request regarding the untimely invoice, which shall detail the reason the invoice is untimely as well as the Private Provider's plan for submitting all future invoices no later than prescribed herein, and it must be signed by an individual empowered to bind the Private Provider to this Contract.

- c. The Private Provider shall not be compensated for travel time to the primary location of service provision.
- d. A "day" shall be defined as any period of time in the 24-hour period of a calendar day. The Private Provider shall be paid the full rate per day per client placed with the Private Provider, EXCEPT the Private Provider shall NOT be paid any amount for the day that the client is removed from the placement with the Private Provider.
- C.4. **Travel Compensation.** The Private Provider shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. **Invoice Requirements.** The Private Provider shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Private Provider shall submit invoices no more often than monthly, with all necessary supporting documentation, to:
- Department of Children's Services  
436 6<sup>th</sup> Avenue North  
Nashville, TN 37243
- b. The Private Provider agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.
- (1) Invoice/Reference Number (assigned by the Private Provider);
  - (2) Invoice Date;
  - (3) Invoice Period (period to which all invoiced charges are applicable);
  - (4) Contract Number (assigned by the State to this Contract);

- (5) Account Name: Department of Children's Services/Child Placement and Private Providers Division;
  - (6) Account/Customer Number (uniquely assigned by the Private Provider to the above-referenced Account Name);
  - (7) Private Provider Name;
  - (8) Private Provider Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
  - (9) Private Provider Contact (name, phone, and/or fax for the individual to contact with billing questions);
  - (10) Private Provider Remittance Address;
  - (11) Complete Itemization of Charges, which shall detail the following:
    - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
    - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
    - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
    - iv. Amount Due by Service; and
    - v. Total Amount Due for the invoice period.
- c. The Private Provider understands and agrees that an invoice to the State under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
  - (2) not include any future work but will only be submitted for completed service; and
  - (3) not include sales tax or shipping charges.
- d. The Private Provider agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
- e. The Private Provider shall complete and sign a "Substitute W-9 Form" provided to the Private Provider by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Private Provider. The Private Provider shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Private Provider's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Private Provider under this or any contract between the Private Provider and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Private Provider.
- C.9. Automatic Deposits. The Private Provider shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Private Provider by the State. Once this form has been completed and submitted to the State by the Private Provider all payments to the Private Provider, under this or any other contract the Private Provider has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Private Provider shall not

invoice the State for services until the Private Provider has completed this form and submitted it to the State.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Private Provider at least thirty (30) days written notice before the effective termination date. The Private Provider shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Private Provider for compensation for any service which has not been rendered. Upon such termination, the Private Provider shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Private Provider fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Private Provider violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Private Provider shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Private Provider.
- D.5. Subcontracting. The Private Provider shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Private Provider shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Private Provider warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Private Provider in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Private Provider hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Private Provider on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Private Provider shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Private Provider hereby attests, certifies, warrants, and assures that the Private Provider shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Private Provider shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document

as Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Private Provider and made available to state officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Private Provider shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Private Provider and made available to state officials upon request.
  - c. The Private Provider shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Private Provider understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a Private Provider from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a Private Provider is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Private Provider shall maintain documentation for all charges under this Contract. The books, records, and documents of the Private Provider, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Private Provider's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Private Provider shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Private Provider, being an independent Contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public

liability and other appropriate forms of insurance on the Private Provider's employees, and to pay all applicable taxes incident to this Contract.

- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Private Provider shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Private Provider agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Private Provider acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Suzanne White  
Tennessee Department of Children's Services  
8th Floor, Cordell Hull Building  
436 6th Avenue North  
Nashville, TN 37243  
Suzanne.G.white@state.tn.us  
Phone: (615) 741-8905  
Fax: (615) 532-1130

The Private Provider:

NAME & TITLE OF PRIVATE PROVIDER CONTACT PERSON  
PRIVATE PROVIDER NAME  
ADDRESS

EMAIL ADDRESS  
Telephone # NUMBER  
FAX # NUMBER

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Private Provider. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Private Provider shall cease all work associated with the Contract. Should such an event occur, the Private Provider shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Private Provider shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Private Provider acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Private Provider agrees that if it is later determined that the true nature of the working relationship between the Private Provider and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Private Provider may be required to repay to TCRS the amount of retirement benefits the Private Provider received from TCRS during the period of this Contract.
- E.5. Insurance. The Private Provider shall carry adequate liability and other appropriate forms of insurance.
- a. The Private Provider shall maintain, at minimum, the following insurance coverage:
- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
  - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
- b. At any time State may require the Private Provider to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.
- E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Private Provider by the State or acquired by the Private Provider on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Private Provider to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Private Provider's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Private Provider of this Contract; previously possessed by the Private Provider without written obligations to the State to protect it; acquired by the Private Provider without written restrictions against disclosure from a third party which, to the Private Provider's knowledge, is free to disclose the information; independently developed by the Private Provider without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Private Provider to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Private Provider due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.7. HIPAA Compliance. The State and Private Provider shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Private Provider warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
  - b. Private Provider warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the contract so that both parties will be in compliance with HIPAA.
  - c. The State and the Private Provider will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Private Provider in compliance with HIPAA. This provision shall not apply if information received by the State under this contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.8. Annual Report and Audit. The Private Provider shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Contract to the commissioner or head of the contracting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Private Provider that receives five hundred thousand dollars (\$500,000) or more in aggregate federal and state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Private Provider may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Private Provider and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the *Audit Manual for Governmental Units and Recipients of Grant Funds* published by the Tennessee Comptroller of the Treasury. The Private Provider shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Private Provider shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the State Contracting Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.
- E.9. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- a. The Contract document and its attachments;



- b. The document entitled "DCS Provider Policy Manual" (the Document) including any changes or additions that may subsequently be made, herein attached by reference.

In the event of a discrepancy or ambiguity regarding the Private Provider's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

- E.10. Prohibited Advertising. The Private Provider shall not refer to this Contract or the Private Provider's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Private Provider or the Private Provider's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.11. Public Accountability. If the Private Provider is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Private Provider on behalf of the State, the Private Provider agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Private Provider shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.

- E.12. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Private Provider shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Private Provider shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.13. Lobbying. The Private Provider certifies, to the best of its knowledge and belief, that:
  - a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Private Provider shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - c. The Private Provider shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

- E.14. Debarment and Suspension. The Private Provider certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Private Provider shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.15. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this contract, these items shall hereinafter be referred to as a “Breach.”

- a. Private Provider Breach— The State shall notify Private Provider in writing of a Breach.
  - (1) In event of a Breach by Private Provider, the state shall have available the remedy of Actual Damages and any other remedy available at law or equity.
  - (2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Private Provider of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Private Provider's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Private Provider as said amounts are likely to be uncertain and not easily proven. Private Provider hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment 2 and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Private Provider and do not include any injury or damage sustained by a third party. The Private Provider agrees that the liquidated damage amount is in addition to any amounts Private Provider may owe the State pursuant to the indemnity provision or other section of this Contract.

The State may continue to withhold the Liquidated Damages or a portion thereof until the Private Provider cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under

this Contract or at law or equity; provided, however, Private Provider shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) **Partial Default**— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Private Provider written notice of: (1) the date which Private Provider shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Private Provider.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Private Provider the greater of: (1) amounts which would be paid the Private Provider to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Private Provider is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Private Provider. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Private Provider for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Private Provider shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Private Provider agrees to cooperate fully with the State in the event a Partial Default is taken.

- (4) **Contract Termination**— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Private Provider shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Private Provider shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Private Provider without waiver of any other remedy or damages available to the State at law or at equity. The Private Provider shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Private Provider under this Contract. Private Provider agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. **State Breach**— In the event of a Breach of contract by the State, the Private Provider shall notify the State in writing within 30 days of any Breach of contract by the State. Said notice shall contain a description of the Breach. Failure by the Private Provider to provide said written notice shall operate as an absolute waiver by the Private Provider of the State's Breach. In no event shall any Breach on the part of the State excuse the Private Provider from full performance under this Contract. In the event of Breach by the State, the Private Provider may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Private Provider to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Private Provider to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Private Provider.

- E.16. **Partial Takeover.** The State may, at its convenience and without cause, exercise a partial takeover of any service which the Private Provider is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Private Provider and a third party, although the Private Provider is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Private Provider shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of

service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Private Provider's other obligations under this Contract. The State may withhold from amounts due the Private Provider the amount the Private Provider would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Private Provider shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.17. Cost Report. If requested by the State, the Private Provider shall complete a cost report using the best information available in accordance with the cost reporting instructions. The Private Provider shall also submit its most recent audited financial statements as requested by the State.
- E.18. Occupancy. The Private Provider acknowledges that this is a fee for service Contract and that neither the State nor the Private Provider can guarantee full occupancy.
- E.19. First Amendment. The Private Provider does not waive rights under the First Amendment to the United States Constitution.
- E.20. Drug Free Workplace. The Private Provider shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F.
- E.21. Financial Information Required. The State must comply with the Office of Management and Budget Circular (OMB) A-87 to claim reimbursement for a portion of the cost of payments made under this contract from the federal government under Title IV-E and/or Title XIX. Information will be periodically required to be submitted by the Private Provider to enable DCS to comply with OMB A-87 and facilitate submission of claims to the federal government in accordance with DCS' federally approved cost allocation plan. Private Provider will be notified at the time documentation is requested the date the submission is required. The documentation to be submitted by the Private Provider will include but not limited to:
  - a. Annual Contracted Private Provider Cost Report completing the forms and following the directions provided by the state;
  - b. Program description and two weekly schedules;
  - c. Audited financial statement with audit opinion for the audited period;
  - d. Reconciliation of the Cost Report to the independent audit; and
  - e. Letter under separate cover from independent auditor on whether the cost allocation method used by the Private Provider in the Cost Report appears to be reasonable.

Failure to submit the above-stated documentation on the specified date shall be deemed a breach of the Contract and the State shall have a right to terminate the contract for cause under Section D.4. of the Contract, or to consider such failure a Partial Default.

- E.22. Supplemental Conflict of Interest. The Private Provider shall not have any owner, member of the board of directors, or member of the board of trustees of that Contract Private Provider who also holds any other position which may influence the placements provided to children in the plaintiff class of Brian A. v. Phil Bredeesen. Such positions include, but are not limited to juvenile court judges, referees or other court officers involved in the individual cases of children in foster care.
- E.23. Title VI of the Civil Rights Act of 1964. The Private Provider shall develop and deliver to DCS on or before July 31<sup>st</sup> of each fiscal year an implementation plan that describes the Private Provider's long-range goals and objectives that will guide the Private Provider's efforts to ensure compliance with Title VI of the Civil Rights Act of 1964 pursuant to the guidelines established by the Tennessee Title VI Compliance Commission. Title VI plans must be submitted to the division below on or before the July 31<sup>st</sup> of each year:

Director of the Division of Diversity Initiatives

- E.24. Requirements Bureau of TennCare. The Private Provider must comply with the following requirements as stipulated in the Contract between The Department of Children's Services and the Department of Finance and Administration, Bureau of TennCare.
- A. The Private Provider must disclose the following information in accordance with the Code of Federal Regulations, Title 42, Part 455, Subpart B:
    - (1) The name and address of each person with an ownership or control interest in the disclosing entity or in any subcontractor in which the disclosing entity has direct or indirect ownership of 5 percent or more;
    - (2) Whether any of the persons named, in compliance with paragraph E.24.A(1) of this section, is related to another as spouse, parent, child, or sibling;
    - (3) The name of any other disclosing entity in which a person with an ownership or control interest in the disclosing entity also has an ownership or control interest. This requirement applies to the extent that the disclosing entity can obtain this information by requesting it in writing from the person. The disclosing entity must—
      - (a) Keep copies of all these requests and the responses to them;
      - (b) Make them available to the Secretary or TennCare upon request; and
      - (c) Advise the TennCare when there is no response to a request.
  - B. The Private Provider must furnish to TennCare or to the Secretary on request, information related to business transactions in accordance with paragraph (1) of this section.
    - (1) The Private Provider must submit, within 35 days of the date on a request by the Secretary or TennCare, full and complete information about:
      - (a) The ownership of any subcontractor with whom the Private Provider has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and
      - (b) Any significant business transactions between the Private Provider and any wholly owned supplier, or between the Private Provider and any subcontractor, during the 5-year period ending on the date of the request.
  - C. Before DCS enters into or renews a contract, or at any time upon written request by TennCare, the Private Provider must disclose to DCS and the Medicaid Agency the identity of any person who:
    - (1) Has ownership or control interest in the Private Provider, or is an agent or managing employee of the Private Provider; and
    - (2) Has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or the title XX services program since the inception of those programs.

TennCare must notify the Inspector General of the Department of any disclosures made under paragraph E.24.C. of this section within 20 working days from the date it receives the information. The Private Provider must also promptly notify the Inspector General of the Department of any action it takes on the provider's application for participation in the program.
  - D. DCS or TennCare may refuse to enter into or renew a contract with a Private Provider if any person who has an ownership or control interest in the Private Provider, or who is an agent or managing employee of the Private Provider, has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid or the title XX Services Program.
  - E. DCS or TennCare may refuse to enter into or may terminate a Private Provider contract if it determines that the Private Provider did not fully and accurately make any disclosure required under paragraph C. of this section.

- F. Provider Requirements: Participation in the TennCare program will be limited to Private Providers who:
1. Agree that the provider may not refuse to provide covered medically necessary or covered preventive services to a child under the age of twenty-one (21) or a TennCare Medicaid patient under this Contract for non-medical reasons. However, the provider shall not be required to accept or continue treatment of a patient with whom the provider feels he/she cannot establish and/or maintain a professional relationship;
  2. Agree that emergency services be rendered without the requirement of prior authorization of any kind;
  3. Maintain an adequate record system and agree that all records be maintained for five (5) years from the close of the contract or retained until all evaluations, audits, reviews or investigations or prosecutions are completed for recording enrollee services, servicing providers, charges, dates and all other commonly accepted information elements for services rendered to enrollees pursuant to the contract (including but not limited to such records as are necessary for the evaluation of the quality, appropriateness, and timeliness of services performed under the provider contract and administrative, civil or criminal investigations and prosecutions).
  4. Acknowledge and understand that as a condition of participation in TennCare, enrollees give the TennCare Bureau, the Tennessee Comptroller of the Treasury, and any health oversight agency, such as the Tennessee Office of Inspector General (TN OIG), Tennessee Bureau of Investigation Medicaid Fraud Control Unit (TBI MFCU), United States Department of Health and Human Services (DHHS) the DHHS Office of Inspector General (DHHS OIG), and the United States Department of Justice (DOJ), and any other authorized state or federal agency, access to their records. Said records shall be made available and furnished immediately upon request for fiscal audit, medical audit, medical review, utilization review, and other periodic monitoring as well as for administrative, civil and criminal investigations or prosecutions upon the request of an authorized representative of the Private Provider, TennCare or authorized federal and state personnel, including, but not limited to, the Tennessee (TN OIG), the Tennessee Department of Children's Services Office of Inspector General (TDCS OIG), the TBI MFCU, the DHHS OIG and the DOJ.
  5. Agree that medical records requirements medical records be maintained at site where medical services are rendered and that enrollees aged 14 and over and enrollee authorized representatives shall be given access to the enrollees' medical records, to the extent and in the manner provided by T.C.A. Sections 63-2-101 and 63-2-102, and, subject to reasonable charges, be given copies thereof upon request.
  6. Agree that TennCare, DHHS, and the DHHS OIG, the Tennessee Comptroller of the Treasury, TN OIG, TBI MFCU, and DOJ, as well as any other authorized state or federal agency or entity shall have the right to evaluate through inspection, evaluation, review or request, whether announced or unannounced, or other means any records pertinent to this Contract including, but not limited to medical records, billing records, financial records, and/or any records related to services rendered, quality, appropriateness and timeliness of services and/or any records relevant to an administrative, civil and/or criminal investigation and/or prosecution and such evaluation, inspection, review or request, and when performed or requested, shall be performed with the immediate cooperation of the provider. Upon request, the Private Provider shall assist in such reviews including the provision of complete copies of medical records. Include a statement that HIPAA does not bar disclosure of Protected Health Information (PHI) to TennCare, TN OIG, TBI MFCU, DHHS, DHHS OIG and DOJ when and as authorized by HIPAA. Provide that any authorized state or federal agency or entity, including, but not limited to TennCare, TN OIG, TBI MFCU, DHHS, DHHS OIG, DOJ, the Tennessee Comptroller of the Treasury, may use these records and information for administrative, civil or criminal investigations and prosecutions;
  7. Accept monitoring, whether announced or unannounced, of services rendered to enrollees sponsored by the Private Provider;

8. Whether announced or unannounced, participate and cooperate in any internal and external Quality Management/Quality Improvement, utilization review, peer review and appeal procedures established by DCS and/or TennCare;
9. Initiate corrective action where necessary to improve quality of care, in accordance with that level of medical care which is recognized as acceptable professional practice in the respective community in which the Private Provider practices and/or the standards established by TennCare;
10. Provide for submission of all reports and clinical information required by DCS;
11. Cooperate with all appropriate State and Federal Agencies, including TBI MFCU and/or TN OIG, in investigating fraud and abuse. In addition, the Private Provider shall fully comply with the provisions of Tennessee Code Annotated Sections 71-5-2601 and 71-5-2603 in performance of its' obligations under this Contract.
  - (a) Fraud and abuse in the administration of the program. Suspected fraud and abuse in the administration of the program shall be reported to TBI MFCU and/or TN OIG.
  - (b) Provider fraud and abuse. All confirmed or suspected provider fraud and abuse shall immediately be reported to TBI MFCU.
  - (c) Enrollee fraud and abuse. All confirmed or suspected enrollee fraud or abuse shall be reported immediately to TN OIG.
12. Upon request and as required by this Contract or state and/or federal law, make available to the TBI MFCU/TN OIG any and all administrative, financial and medical records relating to the delivery of items or services for which TennCare monies are expended. In addition, the TBI MFCU/TN OIG shall, as required by this Contract or state and/or federal law, be allowed access to the place of business and to all TennCare records of the Private Provider, during normal business hours, except under special circumstances when after hour admission shall be allowed. Special circumstances shall be determined by the TBI MFCU/TN OIG.
13. Secure all necessary liability and malpractice insurance coverage as is necessary to adequately protect the enrollees and DCS under this Contract. The Private Provider shall provide such insurance coverage at all times during the Contract and upon execution of the Private Provider Contract furnish DCS with written verification of the existence of such coverage;
14. Agree to recognize and abide by all state and federal laws, regulations and guidelines applicable to the health plan.
15. Acknowledge that this Private Provider Contract incorporates by reference all applicable federal and state laws, TennCare rules and regulations or court orders, and revisions of such laws or regulations shall automatically be incorporated into the Contract, as they become effective. In the event that changes in the Contract as a result of revisions and applicable federal or state law materially affect the position of either party, DCS and Private Provider agree to negotiate such further amendments as may be necessary to correct any inequities;
16. Recognize that in the event of termination of the Contract between DCS and TennCare for any of the reasons, the Private Provider shall immediately make available, to TennCare, or its designated representative, in a usable form, any or all records, whether medical or financial, related to the Private Provider's activities undertaken pursuant to the DCS/Private Provider Contract. The provision of such records shall be at no expense to TennCare;
17. Warrant that no part of the total Contract amount provided herein shall be paid directly, indirectly or through a parent organization, subsidiary or an affiliate organization to any state or federal officer or employee of the State of Tennessee or any immediate family member of a state or federal officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to the Private Provider in connection with any work contemplated or performed relative to this Contract unless disclosed to the Commissioner, Tennessee Department of Finance and

Administration. For purposes of Section E.24.f.17 and its subparts of this Contract, "immediate family member" shall mean a spouse or minor child(ren) living in the household.

Quarterly, by January 30, April 30, July 30, and October 30 each year, or at other times or intervals as designated by the Deputy Commissioner of the Bureau of TennCare and communicated, in writing, to the Private Provider by DCS, disclosure shall be made by the Private Provider to DCS in writing and DCS will forward the disclosure to the Deputy Commissioner of the Bureau of TennCare, Department of Finance and Administration. The disclosure shall include, but not be limited to, the following:

- (a) A list of any state or federal officer or employee of the State of Tennessee as well as any immediate family member of a state or federal officer or employee of the State of Tennessee who receives wages or compensation from the Private Provider; and
- (b) A statement of the reason or purpose for the wages or compensation.

The disclosures shall be made by the Private Provider and reviewed by TennCare in accordance with Standard Operating Procedures and the disclosures shall be distributed to, amongst other persons, entities and organizations, the Commissioner, Tennessee Department of Finance and Administration, the Tennessee Ethics Commission, the TennCare Oversight Committee and the Fiscal Review Committee.

This Contract may be terminated by DCS and/or the Private Provider may be subject to sanctions under this Contract if it is determined that the Private Provider, its agents or employees offered or gave gratuities of any kind to any state or federal officials or employees of the State of Tennessee or any immediate family member of a state or federal officer or employee of the State of Tennessee if the offering or giving of said gratuity is in contravention or violation of state or federal law. It is understood by and between the parties that the failure to disclose information as required under Section E.24.f.17 of this Contract may result in termination of this Contract and the Private Provider may be subject to sanctions in accordance with the provisions of this Contract. The Private Provider certifies that no member of or delegate of Congress, the United States General Accounting Office, DHHS, Centers for Medicare and Medicaid Services (CMS), or any other federal agency has or will benefit financially or materially from this Contract.

- 18. Certify by signing this Contract, to the best of its knowledge and belief, that federal funds have not been used for lobbying in accordance with 45 CFR Part 93 and 31 USC 1352. (See also TCA 3-6-101 *et seq.*, 3-6-201 *et seq.*, 3-6-301 *et seq.*, and 8-50-505.).
- 19. Assure that all material and information, in particular information relating to enrollees or potential enrollees, which is provided to or obtained by or through Private Provider's performance under this Contract, whether verbal, written, tape, or otherwise, shall be reported as confidential information to the extent confidential treatment is provided under state and federal laws. The Private Provider shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations and securement of its rights under this Contract.

All information as to personal facts and circumstances concerning enrollees or potential enrollees obtained by the Private Provider shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of DCS or TennCare or the enrollee/potential enrollee, provided that nothing stated herein shall prohibit the disclosure of information in summary, statistical, or other form which does not identify particular individuals. The use or disclosure of information concerning enrollees/potential enrollees shall be limited to purposes directly connected with the administration of this Contract.

- 20. Accept general and targeted education regarding emergency appeals, including when an emergency appeal is appropriate, and procedures for providing written certification thereof, and comply with the appeal process, including but not limited to, assisting an enrollee by



providing appeal forms and contact information including the appropriate address for submitting appeals for state level review; and

21. Display notices of the enrollee's right to appeal adverse action affecting services in public areas of their facility(s) in accordance with TennCare rules and regulations, subsequent amendments, or any and all court orders. DCS shall ensure that Private Providers have correct and adequate supply of public notices;
  22. Acknowledge that the Private Provider has been informed of the package of benefits that Early and Periodic Screening, Diagnosis and Treatment (EPSDT TENNCare) offers as set out in Section 2-3.u of the TennCare MCO Contractor Risk Agreement (CRA) and which requires providers to make treatment decisions based upon children's individual medical and behavioral health needs. The Private Provider further acknowledges that a copy of Section 2-3.u can be accessed on the TennCare web site will be furnished to the provider upon request. The TennCare Web site is found at: <http://www.state.tn.us/tenncare/healthplans/TCMCO1.htm>
  23. Agree not to encourage or suggest, in writing or verbally, that TennCare children be placed into state custody in order to receive medical or behavioral services covered by TennCare;
  24. Agree to follow DCS and TennCare procedures for the provision of language interpretation and translation services for any enrollee who needs such services, including but not limited to, enrollees with Limited English Proficiency.
  25. Agree that if any requirement in the Private Provider Contract is determined by TennCare to conflict with the Contract between TENNCARE and DCS, such requirement shall be null and void and all other provisions shall remain in full force and effect
  26. Certify by signing this Contract that the Private Provider has not been excluded from participation in the Medicare and/or Medicaid programs pursuant to Sections 1128 or 1156 of the Social Security Act or who are otherwise not in good standing with the TennCare program.
- E.25. Supplemental Subcontracting In accordance with the Brian A. Settlement Agreement (specifically, the Racial Disparities Study conducted by Dr. Ruth McRoy) the Department is actively working towards decreasing the racial disparity between the service providers and the target service populations. To help correct this disparity, DCS strongly recommends, in situations where subcontracts are necessary, that the Private Provider subcontract for services with minority owned or operated Private Provider that can assist the Private Provider in meeting the needs of the children and families that are served. DCS requires that the Private Provider join the Department's commitment to achieving diversity and in developing programs that reflect the diversity of the population that we serve.
- E.26. Monitoring Subcontracts. The Private Provider shall develop written procedures for monitoring all DCS approved subcontracts. The procedures must clearly outline the process for assuring that all subcontracts are in compliance with the federal and state safety requirements as outlined in the DCS Policy Manual, Section 16.4 and the Private Provider Manual (Personnel and Resource Home Eligibility Team (RHET) requirements). The procedures shall be available upon request to DCS and any other entity approved by DCS. The Private Provider shall have quality assurance/quality improvement plans for subcontractors. The Private Provider shall also establish and maintain an internal quality improvement process to assess its performance and that of its subcontractors.
- The Private Provider shall not subcontract for services with any person or entity that has had a contract terminated by DCS for failure to satisfactorily perform or for cause; or has failed to implement a corrective action plan approved by DCS or any other governmental entity, after having received due notice.
- E.27. Operating Capital. The Private Provider shall maintain a plan to ensure access to operating capital of ninety (90) days, in the event payment to the Private Provider is interrupted for reasons beyond the Private Provider's control or in an emergency, for continuity of operations.
- E.28. Private Provider Gatekeeper Contact. The Private Provider shall provide information to the Child Placement & Private Provider's Division (CPPP) relative to the Private Provider's gatekeeper or

representative empowered to make placement decisions on behalf of the Private Provider that would allow access 24 hours a day seven days a week to DCS. The information to be provided are as follows: gatekeeper/representative name(s); title; direct telephone number(s), cell phone number and/or pager number(s).

- E.29. Performance Standards. By executing of this contract the Private Provider hereby acknowledges and agrees that its performance under this contact must meet the standards set forth in Section A of this contract and the DCS Provider Policy Manual and will be bound by the conditions set forth in this contract. If the Private Provider fails to meet these standards, as determined by the Child Placement & Private Providers Division, DCS, at its exclusive option, may allow up to six months for the provider to achieve compliance with the standards. If performance deficiencies are not resolved to the satisfaction of DCS within the prescribed time, and if no extenuating circumstances can be documented by the Private Provider to DCS' satisfaction, DCS may cancel the contract with the Private Provider. The determination of the extenuating or mitigating circumstances is the exclusive determination of DCS.
- E.30. Notification of Closure. The Private Provider shall notify DCS of the closure of their agency or facility ninety (90) days prior to the date of closure. Failure to provide DCS ninety (90) days written notice of a Private Provider's intent to close its operations or any part of their operation shall be considered a breach of this contract and subject to the penalties defined in Section E.15. Breach of this contract.
- E.31. Closure Transition. In the event that this contract is terminated the Private Provider shall work in conjunction with DCS to transition out of the contract within ninety (90) days from the date of notification. This time period will allow the Private Provider and DCS sufficient time to reconcile records, transfer case files and transition out of its contracts with DCS.
- E.32. State Ownership of Case Files. The State shall have all ownership right, title, and interest, in all case files created, designed, developed, derived, documented, installed, or maintained on behalf of DCS under this Contract. DCS shall have unlimited rights to all said case files. The Private Provider shall furnish such information and data upon request of the DCS, in accordance with the Contract and applicable State law.
- E.33. Penalties. DCS reserves the right to assess penalties to Private Providers for failure to adhere to program and policy guidelines. The Private Provider shall be notified by letter and/or e-mail of non-compliance and given an opportunity to correct said non-compliance within a specified period. Potential penalties will be clearly defined in the notification but will not exceed the per diem rate per child for the level of service provided times the period of non-compliance.

**IN WITNESS WHEREOF:**

**PRIVATE PROVIDER LEGAL ENTITY NAME:**

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**PRIVATE PROVIDER SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF PRIVATE PROVIDER SIGNATORY (above)**

**DEPARTMENT OF CHILDREN'S SERVICES:**

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**Viola P. Miller Commissioner**

**Date**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>PRIVATE PROVIDER LEGAL ENTITY NAME:</b>	
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security Number)	

**The Private Provider, identified above, does hereby attest, certify, warrant, and assure that the Private Provider shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

**SIGNATURE & DATE:**

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NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Private Provider. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.